

CIVIL SERVICE COMMISSION MINUTES

June 18, 2003

A meeting of the Civil Service Commission was held at 2:30 p.m., in Room 358 at the County Administration Building, 1600 Pacific Highway, San Diego, California.

Present were:

Barry I. Newman
Sigrid Pate
Marc Sandstrom
Gordon Austin
A.Y. Casillas

Comprising a quorum of the Commission

Support Staff Present:

Larry Cook, Executive Officer
Ralph Shadwell, Senior Deputy County Counsel
Selinda Hurtado-Miller, Reporting

Approved
Civil Service Commission
August 20, 2003

**CIVIL SERVICE COMMISSION MINUTES
JUNE 18, 2003**

1:30 p.m. CLOSED SESSION: Discussion of Personnel Matters and Pending Litigation

2:30 p.m. OPEN SESSION: Room 358, 1600 Pacific Highway, San Diego, California 92101

PRE-AGENDA CONFERENCE

<u>Discussion Items</u>	<u>Continued</u>	<u>Referred</u>	<u>Withdrawn</u>
<u>A,7,8,9,10,11,12,13</u>		<u>9,10</u>	<u>6</u>

COMMENTS Motion by Sandstrom to approve all items not held for discussion; seconded by Austin. Carried.

**CLOSED SESSION AGENDA
County Administration Center, Room 458
(Notice pursuant to Government Code Sec. 54954.2)
Members of the Public may be present at this
location to hear the announcement of the
Closed Session Agenda**

A. Public Employee Performance Evaluation: Executive Officer

B. Public Employee Appointment/Employment: **Jodi Breton**, challenging failure to be appointed as Deputy District Attorney IV on the basis of political affiliation discrimination by the former District Attorney. (Commissioner Sandstrom).

Item B is also being discussed in closed session pursuant to conference with legal counsel as anticipated litigation because of a significant exposure to litigation pursuant to Government Code section 54956.9, subdivision (b).

**OPEN SESSION AGENDA
County Administration Center, Room 358**

NOTE: Five total minutes will be allocated for input on Agenda items unless additional time is requested at the outset and the President of the Commission approves it.

MINUTES

Prior to the reading of the consent agenda below, Commissioner Newman expressed his opinion regarding Closed Session Item A above.

"I sincerely believe that the vote regarding the continued employment of our current executive officer is as critically important and as seminal a vote as any previously taken by this body since its inception. I must start my comments by telling a story attributable to Benjamin Cardoza, who when urged by his good friend Judge Learned Hand to do justice on

the U.S. Supreme Court, quickly and heatedly responded, and I quote "his role was not to do justice but to ensure that everyone followed the rules." In my personal view this is also the role of this body; to ensure that everyone follows the rules, including us. I see it as equally incumbent upon us to follow the rules as we see it incumbent upon the departments and the employees in cases before us. Over the very recent past, I have seen several instances of Commissioners with the righteous indignation of Old Testament prophets, raining angry condemnation upon departments or supervisory personnel who have not followed the rules. To ensure this body's credibility and integrity I see it as vital that we also follow, not only the rules as set forth in a more formal policy and procedures under the Civil Service Rules and County Charter, but also the policies and procedures as promulgated by the CAO's office and equally importantly the time-tested human resource principles of organizational succession planning. If we do not, then we will be positioning ourselves in a difficult if not impossible posture of communicating to those under our jurisdiction that they should do as we say and not as we do. By this action, we are clearly and loudly stating that despite the CAO's position that retired employees should be brought back only for transitional purposes or for emergencies, a position which I understand is followed by the rest of the County organization, and despite the acknowledged value of thoughtful and executed succession planning, this Commission will be operating through its second year of relying solely on a retired staffer, with not even a modest or even optical effort of seeking, training or bringing-to-speed his successors. I've tried unsuccessfully to convince two of my colleagues on this Commission of the validity, correctness and necessity of my position, but I have lost out to what I believe to be the tempting attractiveness of the convenient or easy alternative. I wonder just what this body's reaction would be if a department were to attempt to justify its violation or ignoring of a policy by stating that its behavior was convenient or easy. In conclusion I find this Commission action so indefensible and so unacceptable that I must not only vote against the motion, but I'm obligated to make my opposition so publicly visible that the County community sees it in the same harsh glare of bad practice, bad policy and bad procedure as I do."

Commissioner Sandstrom explained why he voted "Yes" on the motion.

"As one Commissioner, I have to say that Mr. Newman is entitled to his opinion, but my vote as a Commissioner was based on the agreed, by all Commissioners, the outstanding performance of our Executive Officer and the continued pledge of outstanding performance. Therefore, there was no reason to make a change and disrupt the excellent activities of this Commission, and I think Mr. Newman is operating under a false assumption that the letter written by the CAO somehow applies to this Commission."

1. Approval of the Minutes of the special meeting of May 9, 2003.

Approved.

2. Approval of the Minutes of the regular meeting of May 21, 2003.

Approved. Commissioner Austin abstained.

CONFIRMATION OF ASSIGNMENTS

3. Commissioner Newman: Chuck Uno on behalf of **Alfonso Padilla**, former Deputy Sheriff-Detentions, appealing an Order of Termination and Charges from the Sheriff's Department.

Accepted.

4. Commissioner Pate: Wendell Prude, S.E.I.U. Local 2028, on behalf of **Teresa Weatherford**, Detentions Processing Technician, appealing an Order of Pay Step Reduction and Charges from the Sheriff's Department.

Accepted.

REASSIGNMENT

5. Commissioner Austin: **Maurice Lawrence**, Stock Clerk, appealing his placement on Compulsory Leave by the Health and Human Services Agency (HHSA). (Commissioner Pate was originally assigned.)

Confirmed.

WITHDRAWALS

6. Commissioner Sandstrom: **Joanne Evoy**, Deputy District Attorney III, alleging political affiliation discrimination by the former District Attorney.

Withdrawn.

COMPULSORY LEAVE

Findings

7. Commissioner Austin: **Maurice Lawrence**, Stock Clerk, appealing his placement on Compulsory Leave by the HHSA.

FINDINGS AND RECOMMENDATIONS:

Maurice Lawrence, hereinafter referred to as Appellant, has been employed as a Stock Clerk for HHSA since December 1993. A non-job related medical condition caused HHSA to initiate a fitness for duty medical exam by coordinating with the Department of Human Resources (DHR). The results of the medical examination indicate that Appellant cannot perform certain essential job functions as a Stock Clerk, which resulted in HHSA making a determination that he must be placed on compulsory leave. After conducting a complete hearing and reviewing all relevant documents, the hearing officer recommended that the Commission affirm HHSA's decision to place Appellant on compulsory leave.

**Motion by Austin to approve findings and recommendations;
seconded by Pate. Carried.**

DISCRIMINATION

Findings

8. Commissioner Newman: Ted Burnett, S.E.I.U. Local 535, on behalf of **Laura Dizon**, former Eligibility Technician, HHSA, alleging national origin and gender discrimination by the HHSA.

FINDINGS AND RECOMMENDATIONS:

At the regular meeting of the Civil Service Commission on February 19, 2003, the Commission appointed Barry I. Newman to investigate the complaint submitted by Complainant. The complaint was concurrently referred to the Office of Internal Affairs for investigation and report back. The report of OIA was received and reviewed by the Investigating Officer, who concurred with the findings that there was no evidence to support Employee's allegations of gender and national origin discrimination by the Health and Human Services Agency, and that probable cause that a violation of discrimination laws occurred based on gender and national origin was not established in this matter. It is therefore recommended that this complaint be denied; that the Commission approve and file this report with a findings of no probable cause that Complainant has been discriminated against on the basis of gender and national origin; and that the proposed decision shall become effective upon the date of approval by the Civil Service Commission.

**Motion by Newman to approve Findings and Recommendations;
seconded by Austin. Carried.**

Complaints

9. **Valerie McBrayer**, Administrative Analyst I, Sheriff's Department alleging non-job related factor discrimination (differential treatment to job applicant based on employer) by the Department of Human Resources (DHR). (See No. 11 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

This Item, in conjunction with Item Nos. 10, 11 and 12 below, were pulled for discussion by Employees Valerie McBrayer and Mary Porath, and Senior Deputy County Counsel, Dennis Floyd, representing DHR. The discussion pertained to whether this matter falls within the parameters of a Rule VI investigation. Ralph Shadwell, Sr. Deputy County Counsel, advised that there may be non job-related factor(s) of discrimination involved and therefore may be forwarded to OIA for investigation. Clarification by the Executive Officer (referencing the Daniel Vasquez decision) pointed to the fact that DHR does take the clear position of not accepting letters of support for eligibility requirements. The Employees both contend that they were working out of class, in the hopes that their positions would be re-classified. However, because the reclassification study was not commenced prior to the publication of eligibility requirements for the position, the Employees believe that they have been discriminated against. Further, there was discussion regarding the fair measurement of eligibility between County employees and outside-County recruitments. Commissioner Newman added that because there are no precise job descriptions for non-County candidates, there is no acceptable solution, therefore the allegation of discrimination is unwarranted.

**Motion by Austin to accept staff recommendation; seconded by Pate.
Carried. Commissioner Casillas assigned.**

AYES:	Pate, Austin, Casillas
NOES:	Newman, Sandstrom
ABSTENTIONS:	None

10. **Mary Porath**, Analyst I, Sheriff's Department alleging non-job related factor discrimination (differential treatment to job applicant based on employer) by DHR. (See No. 12 below.)

RECOMMENDATION: Assign an Investigating Officer and concurrently appoint the Office of Internal Affairs to conduct an investigation and report back.

See No. 9 above.

Motion by Austin to accept staff recommendation; seconded by Pate. Carried. Commissioner Casillas assigned.

AYES: Pate, Austin, Casillas
NOES: Newman, Sandstrom
ABSTENTIONS: None

SELECTION PROCESS

Complaints

11. **Valerie McBrayer**, Administrative Analyst I, Sheriff's Department, appealing DHR's determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst II. (See No. 9 above.)

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed above.

Motion by Sandstrom to accept staff recommendation; seconded by Casillas. Carried.

12. **Mary Porath**, Analyst I, Sheriff's Department, appealing DHR's determination that she is ineligible to compete in the selection process for the classification of Administrative Analyst II. (See No. 10 above.)

RECOMMENDATION: Hold in abeyance pending the outcome of the discrimination investigation listed above.

Motion by Sandstrom to accept staff recommendation; seconded by Casillas. Carried.

13. **Teresa Acevedo**, Student Worker-Undergraduate, Probation Department, appealing the selection process used by DHR and the Probation Department for the classification of Deputy Probation Officer.

RECOMMENDATION: Grant Request.

Cheryl Smith, personnel officer representing the Department, explained that the County has an outdated website which is in the process of being re-done. The outdated website states that student worker time may be used to qualify toward the Deputy Probation Officer exam process.

Appellant spoke to the Commission, explaining that as a student worker, she performed the duties of a deputy probation officer and relied on the website that stated student worker time could be utilized toward the exam process.

Although the Commission understands the disappointment Appellant spoke of, it feels the County has the right to set minimum qualifications for an exam process and should not be bound due to an outdated website.

Motion by Sandstrom to deny request; seconded by Pate. Carried.

AYES: Newman, Sandstrom, Austin, Casillas
NOES: Pate
ABSENT: None
ABSTENTIONS: None

OTHER MATTERS

Extension of Temporary Appointments

14. Health and Human Services Agency
 - A. 1 Residential Care Worker Trainee (Jon Athanacio)
 - B. 1 Intermediate Clerk Typist (Esmeralda Gonzalez)
15. Department of General Services
 - 2 Mail Processors (Jesus Gonzalez, David Dredden)

RECOMMENDATION: Ratify Item Nos. 14 & 15.

Item Nos. 14 and 15 ratified.
16. Public Input.

NEXT MEETING OF THE CIVIL SERVICE COMMISSION WILL BE AUGUST 6, 2003.